



CHARTERED TAX INSTITUTE OF MALAYSIA (225750 T)
(Institut Percukaian Malaysia)

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

REVENUE LAW

DECEMBER 2018

Student
Registration No.

Date

Desk No.

Examination Centre

Time allowed: 3 hours

INSTRUCTIONS TO CANDIDATES

1. You may answer this paper **EITHER** in English **OR** in Bahasa Malaysia. Only **ONE** language is to be used.
2. This paper consists of **SIX** questions. **Candidates are ONLY REQUIRED TO ANSWER FIVE QUESTIONS**
3. The Income Tax Act 1967 (as amended) is referred to as ITA.
4. Each answer should begin on a separate answer booklet.
5. Answers should be written in either black or blue ink.
6. No question paper or answer booklet is to be removed from the examination hall.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

Question 1

Metal One Sdn Bhd (Metal One) was incorporated in the year 2005 and its principle business is to import and distribute cold-rolled steel products in Malaysia. Metal One is not an investment holding company.

The prices of steel products that Metal One distributes are extremely volatile, fluctuating with the varying global demand for steel.

Accordingly, Metal One's cash reserves must readily adapt to the global situation, as and when steel prices go up, they need to have large amount of funds to purchase and import the products. However, when prices are low, Metal One will deposit excess cash in short term fixed deposits with financial institutions in Malaysia. This is on the premise that Metal One's objective is to exploit on such excess and idle funds to maximise profits for its shareholders. In doing so, Metal One obtained interest income in the years of assessment 2012 to 2015 and is subjected to income tax as business income under Section 4(a) of the ITA.

When the Inland Revenue Board (IRB) audited Metal One, they took the position that such income from fixed deposit should fall under Section 4(c) of the ITA as "interest" income. Consequently, on 1.10.2018, the IRB raised a notice of additional assessment for the years of assessment 2012 to 2015 on Metal One.

Metal One intends to file notice of appeal against the said assessments.

Required

With reference to the ITA and Metal One:

- (a) **Identify the pertinent facts and the related issues in the case for purposes of income tax.** (5 marks)
- (b) **With reference to section 4 and relevant cases law decisions, identify the principles and test expounded in those cases in relation to the taxation of income derived from the placement of excess funds in fixed deposits, and advise One Metal on the basis for an appeal against the additional assessment for the years of assessment 2012-2015.** (14 marks)
- (c) **With respect to the notice of additional assessment for year of assessment 2012, advice One Metal on any additional merits for an appeal.** (1 mark)

[Total: 20 marks]

Question 2

- (a) With reference to the decided case of *MM Sdn Bhd V KPHDN (2013) MSTC 10-046* [‘the taxpayer’] and the ITA discuss the following:
- (i) **The factors that were material to the Court’s decision in favour of the taxpayer in relation to the commission rate received by the said taxpayer;**
(8 marks)
 - (ii) **The matters that were taken into account by the court in relation to the business process improvement services and regional services paid by the taxpayer.**
(8 marks)
- (b) **Based on the *MM Sdn Bhd V KPHDN (2013) MSTC 10-046* decision, discuss the lessons learnt that could be used by Malaysian taxpayers to take a defensive position with respect of a tax audit from the Inland Revenue Board of Malaysia.**
(4 marks)

[Total: 20 marks]

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Question 3

- (a) With reference to the ITA, explain whether the following arrangement constitutes a partnership:
- (i) **Jack and Jill together operate a tailoring business. Jack provided the capital to start up the business, while Jill who is skilled in sewing, provides the tailoring services. They have agreed that any profits from the business will be split equally between the two of them.**
(1 mark)
 - (ii) **Rahim and Rose own a trading business in which they both contribute equally in terms of capital and skill to the running of the business and have also come to a mutual agreement regarding the distribution of profits. They are however not personally liable for any debts and liabilities from their business.**
(1 mark)
- (b) **Discuss four (4) factors that are considered relevant by the courts in the determination of a partnership, citing and explaining the relevant case laws in respect of those factors.**
(6 marks)
- (c) On 15 January 2017, P and S commenced business as a partnership under the name of "Trading Enterprise" to trade in textile. It was decided that Trading Enterprise will close its accounts to 31 December each year. P left the partnership on 31 August 2017, and M joined the partnership with effect from 1 September 2017.

Required:

- (i) **With reference to provisions of the ITA, advise Trading Enterprise on matters pertaining to the filing of a partnership return and the determination of the partnership income or loss as the case may be, and its taxability, if any, on the partners of the partnership.**
(6 marks)
- (ii) **With respect to the change of partners in Trading Enterprise, advise the partners P, S and M on the partnership status of Trading Enterprise for the purposes of the ITA, and the determination of the relevant basis periods for the relevant partners for Year of Assessment 2017.**
(6 marks)

[Total: 20 marks]

Question 4

- (a) The question of what is '**Plant**' was first deliberated in the case of *Yarmouth v France (1887) 19QBD647*.

Required:

Discuss the decision in the *Yarmouth v France* case and the principle established with regard to the determination of what is '*plant*'.

(3 marks)

- (b) In the Malaysian case of *Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd (2013) MSTC 30-054*, a purpose built car park was considered to be 'plant' within the meaning of Schedule 3 of the ITA.

Required:

Discuss facts of the case and the basis for the decision in that case to treat the car park as 'plant' for the purposes of Schedule 3 of the ITA.

(10 marks)

- (c) In the context of the ITA and Schedule 3, explain the concept of 'qualifying plant expenditure'.

(3 mark)

- (d) In the case of *Success Electronics and Transformer Manufacturer Sdn Bhd (2012) MSTC 30-039* the taxpayer company claimed reinvestment allowance under Schedule 7A in respect of several items of expenditure but that was disputed by the Inland Revenue Board.

Required:

What are the expenditure that the court considered as forming part of the qualifying capital expenditure for the purposes of the reinvestment allowance and the basis for its decision?

(4 marks)

[Total: 20 marks]

Question 5

- (a) In 2016, the Inland Revenue Board (IRB) conducted an audit on PTT Sdn Bhd (PTT) for the years of assessment 2010 and 2011. The audit was concluded in 2018 and the IRB raised notices of additional assessments all dated 10.9.2018 for years of assessment 2010 and 2011. The IRB did not provide any reasons for the issue of these additional notices of assessment which were served by IRB on PTT personally on 23.9.2018.

PTT plans to appeal against the notice of additional assessment for the years of assessment 2010-2011 dated 10.9.2018.

Required:

- (i) **With reference to the ITA, advise PTT on the payment of the taxes as assessed for the years of assessment 2010 to 2011 under the notice of additional assessment dated 10.9.2018.**
(7 marks)
- (ii) **Explain the consequences to the directors of PTT, of the non-payment or late payment of the additional taxes, elaborating on the meaning of a 'director' under the ITA.**
(4 marks)
- (iii) **Explain to PTT how it could appeal against the notice of additional assessment that were issued, citing relevant case laws that could be used in its support**
(3 marks)
- (iv) **Assuming PTT wants to pay the additional taxes as assessed, by instalments, what would be your advice to PTT, including consequences of instances where instalments could be defaulted?**
(2 marks)
- (b) For the year of assessment 2017, Rajni Sdn Bhd (Rajni) furnished its tax returns to the Inland Revenue Board on 30.6.2018. In its returns, Rajni omitted to claim industrial building allowance for its factory which was fitted with machinery and equipment for the processing of palm oil. On 10.10.2018, under the advice of its tax consultant, it came to Rajni's knowledge that the company was entitled for Industrial Building Allowance.

Rajni now wants to revise the tax computation for the year of assessment 2017. As at 31 December 2018 Rajni has not paid taxes for year of assessment 2017.

Required:

Advise Rajni on how it could go about making a claim for the industrial building allowance having regard to the fact that it has already filed a return for the year of assessment 2017 on 30 June 2018.

(4 marks)

[Total: 20 marks]

Question 6

The Maplewood group of companies is in the business of providing architectural services. The ultimate holding company is Maplewood Pte Ltd (Maplewood), a Singapore tax resident company incorporated in Singapore, which does not have a permanent establishment (PE) in Malaysia.

MWood Sdn Bhd (Mwood) is a Malaysian tax resident company incorporated in Malaysia, and is one of the subsidiaries of Maplewood. Mwood commenced its business operations in the year of assessment (YA) 2013, and closes its accounts on 31 December each year. Mwood is also in the business of providing architectural services.

In January 2017, Mwood secured a new project with a Malaysian client. The project is estimated to be completed in 2 years. However, in November 2017, due to unforeseen circumstances, the management team realized that Mwood would not have the manpower required to complete the project within the stipulated timeline.

Hence, Maplewood proposed that Mwood engage Walnutwood Co Ltd (Walnutwood), another subsidiary of Maplewood, to provide support for the project for a 12-month period in YA 2018. Walnutwood is a Hong Kong (HK) tax resident company incorporated in Hong Kong, and has never had any other projects in Malaysia. Walnutwood's employees will be required to be mobile and work at any of Mwood's client's premises in Malaysia, for the duration of the 12-month period. Walnutwood's role will be to provide architectural consultancy services and advice. Walnutwood will charge a consultancy fee to Mwood and will also seek a reimbursement of airfare, hotel accommodation and ground transportation costs incurred in the provision of the services.

Since 1 January 2017, Maplewood has started providing finance and management services to its subsidiaries, including Mwood and Walnutwood, for which it charges an annual management fee. Most of the work is done by Maplewood personnel in Singapore, but part of the work (generally not exceeding a few days per calendar year) may be done in the country of incorporation of the relevant subsidiary (i.e. Malaysia or Hong Kong). Maplewood personnel may travel to Malaysia for up to 2 weeks to assist Walnutwood in the technical management of part of the work done in Malaysia by Walnutwood.

Mwood also borrowed RM5,000,000 from Maplewood, on which it incurs interest at an arm's length basis in YA 2017, to finance working capital for the new project in Malaysia.

The chief financial officer (CFO) of Mwood has approached you, the company's tax adviser, for advice on the following:

1. Withholding tax implications of the various payments to non-residents;
2. What is the concept of a PE, how does this impact Walnutwood, and what are the implications if a PE is created in Malaysia.

The CFO understands that questions i) and ii) above may be somewhat interrelated.

Required:

(i) By reference to the Income Tax Act 1967 (ITA) and relevant Double Tax Agreements (DTA), discuss the concept of PE, and the tax implications of Walnutwood providing consultancy services in Malaysia for the duration of twelve months in YA 2018.

(10 marks)

(ii) Please consider if your answer would be different if the consultancy services were predominantly provided remotely by Walnutwood, with intermittent travels of Walnutwood employees to Malaysia (not exceeding two months, in total).

(3 marks)

(iii) By reference to the ITA, DTA and relevant case law authorities, discuss the circumstances under which the following may be subject to Malaysian withholding tax as well as the procedure and deadline for complying with the withholding tax obligations:

- Management fee payable by MWood to Maplewood in 2017 and 2018
- Management fee payable by Walnutwood to Maplewood in 2017 and 2018
- Interest payable by MWood to Maplewood

(7 marks)

An extract of the relevant Double Tax Agreements is provided for your reference.

[Total: 20 marks]

DOUBLE TAXATION AGREEMENT (MALAYSIA – HONG KONG)

ARTICLE 5

PERMANENT ESTABLISHMENT

1. *For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.*
2. *The term “permanent establishment” includes especially:*
 - (a) *a place of management;*
 - (b) *a branch;*
 - (c) *an office;*
 - (d) *a factory;*
 - (e) *a workshop; and*
 - (f) *a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.*
3. *The term “permanent establishment” also encompasses:*
 - (a) *a building site, a construction, installation or assembly project or supervisory activities in connection therewith, but only if such site, project or activities last more than nine (9) months;*
 - (b) *the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period.*
4. *Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:*
 - (a) *the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;*
 - (b) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;*
 - (c) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;*
 - (d) *the maintenance of a fixed place of business solely for the purpose of purchasing*

- goods or merchandise or of collecting information, for the enterprise;*
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;*
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.*
5. *Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person:*
- (a) has and habitually exercises in that Party an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or*
 - (b) has no such authority, but habitually maintains in the first-mentioned Party a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.*
6. *An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.*
7. *The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.*

DOUBLE TAXATION AGREEMENT (MALAYSIA – HONG KONG)

ARTICLE 13

FEES FOR TECHNICAL SERVICES

1. *Fees for technical services arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.*
2. *However, such fees for technical services may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the fees for technical services is a resident of the other Contracting Party, the tax so charged shall not exceed five (5) per cent of the gross amount of the fees for technical services.*
3. *The term “fees for technical services” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.*
4. *The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the fees for technical services arise through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.*
5. *Fees for technical services shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the obligation to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.*
6. *Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services paid exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.*

DOUBLE TAXATION AGREEMENT (MALAYSIA – SINGAPORE)

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraphs 2, interest to which a resident of Singapore is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as defined in section 2(1) of the Income Tax Act, 1967 of Malaysia.
4. Notwithstanding the provisions of paragraphs 2 and 3, the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.
5. For the purposes of paragraph 4, the term "Government":
 - (a) in the case of Malaysia means the Government of Malaysia and shall include:
 - (i) the Governments of the States;
 - (ii) the Bank Negara Malaysia;
 - (iii) the local authorities;
 - (iv) the statutory bodies; and
 - (v) the Export-Import Bank of Malaysia Berhad;
 - (b) in the case of Singapore means the Government of the Republic of Singapore and shall include:
 - (i) the Monetary Authority of Singapore;
 - (ii) the Government of Singapore Investment Corporation Pte Ltd; and
 - (iii) the statutory bodies.
6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtors profits, and in particular, income from government securities and income from bonds or debentures.
7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
8. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

DOUBLE TAXATION AGREEMENT (MALAYSIA – SINGAPORE)

ARTICLE 13

TECHNICAL FEES

1. Technical fees derived from one of the Contracting States by a resident of the other Contracting State who is the beneficial owner thereof may be taxed in the first-mentioned Contracting State. However, the tax so charged shall not exceed 5 percent of the gross amount of the technical fees.
2. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
4. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State and the services are performed in that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment or fixed base, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated if the services are performed in that State.
5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

(END OF QUESTION PAPER)